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Letter dated 31 December 2013 from the Chair of the Informal Working Group on International Tribunals addressed to the President of the Security Council

I have the honour to transmit herewith the report of the Informal Working Group on International Tribunals containing an account of the Group's activities from 1 January to 31 December 2013 (see annex).

I would appreciate it if the present letter and its annex were brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Gert **Rosenthal**
Chair
Informal Working Group on International Tribunals

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Annex

Report of the Informal Working Group on International Tribunals for 2013

I. Introduction

1. The present report is to inform the Security Council about the work of the Informal Working Group on International Tribunals from 1 January to 31 December 2013.

II. Organizational matters

2. The Working Group was established on an informal basis in 2000 to consider matters relating to the United Nations and United Nations-assisted tribunals, particularly the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. The Working Group consists of the legal advisers of the missions of the members of the Security Council and is assisted by the Office of the Legal Counsel of the Office of Legal Affairs and the Security Council Affairs Division of the Department of Political Affairs.

3. Until 2007, the Working Group's chairmanship followed the monthly rotation of the presidency of the Council and it met only on an ad hoc basis. At the end of 2007, given the intensive work relating to residual issues and the completion strategies of the Tribunals pursuant to resolutions 1503 (2003) and 1534 (2004), the Working Group decided to appoint a single Chair and started meeting on a regular basis. In 2008, the chairmanship was held by Belgium. In 2009 and 2010, Austria was the Chair, followed by Portugal in 2011. In 2012 and 2013 Guatemala had the honour of chairing the Working Group.

4. During the reporting period, the Working Group continued to meet regularly and held seven meetings, including with the Presidents and Prosecutors of the two Tribunals when in New York for their presentations to the Security Council. The members of the Working Group also held informal exchanges of views and conducted negotiations on a Security Council resolution, and issued a statement to the press and sent out letters concerning the International Tribunal for the Former Yugoslavia in 2013.

5. The working methods of the Working Group were also discussed upon proposals by Guatemala to include matters concerning the International Criminal Court in its agenda, but no consensus was reached to discuss International Criminal Court matters in the Working Group.

6. The Russian Federation presented proposals that it indicated had been drafted with a view to preventing further delays in the completion of the cases and optimizing the working methods of the Tribunals, including an external independent assessment of the performance of the International Tribunal for the Former Yugoslavia. No consensus was reached on the proposals by the Russian Federation.

III. Security Council briefings

7. Following previous practice, the Permanent Representative of Guatemala, in his capacity as Chair, regularly briefed the Security Council on the progress of the Working Group as part of his statements at the biannual public meetings of the Council on the completion strategies of the two Tribunals, on 12 June (6977th meeting) and 5 December 2013 (7073rd meeting). On 9 December 2013, the Permanent Representative of Guatemala briefed the Security Council (7076th meeting) as outgoing Chair of the Working Group during the briefings by Chairmen of subsidiary bodies of the Security Council.

8. On 10 June 2013, the Working Group held an exchange of views with the Presidents and the Prosecutors of the two Tribunals on the work of the Tribunals and their completion strategies (see S/2013/308 and S/2013/310) in preparation for the Tribunals' periodic briefing to the Security Council on 12 June. Judge Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals made a presentation on the report of the Mechanism (S/2013/309). In addition to those briefings, the Working Group also considered the consolidated comprehensive plan of 15 April 2013 on the completion strategy, closure and transition to the Mechanism, submitted in accordance with resolution 2081 (2012). Thereafter, the Working Group examined the strategic plan of the International Criminal Tribunal for Rwanda of 30 May 2013 for the relocation of acquitted and released persons presently in Arusha. The President and the Prosecutor of the International Tribunal for the Former Yugoslavia provided an update on the request contained in a letter dated 14 May 2013 from Serbia relating to the enforcement of sentences. Finally, an expert meeting was held to consider upcoming Security Council decisions.

9. On 4 December 2013, in preparation for the periodic briefing to the Security Council on 5 December, the Working Group held another exchange of views with the Presidents and the Prosecutors of the two Tribunals on the work and activities of the Tribunals (see S/2013/678 and S/2013/663). The exchange also included the work and activities of the Residual Mechanism (see S/2013/679). Following the exchange of views, an expert meeting was held to consider the letters from the President of the International Tribunal for the Former Yugoslavia (S/2013/685, annexes I and II) on the extension of terms of office of the judges of that Tribunal.

10. It should be noted that the debate of 5 December 2013 constituted a historic occasion in which the respective principals briefed the Security Council for the first time with the three mechanisms — the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Residual Mechanism for Criminal Tribunals — in full, concurrent operation.

IV. Functioning of the Residual Mechanism

11. By its resolution 1966 (2010), the Security Council, acting under Chapter VII of the Charter, decided to establish the International Residual Mechanism for Criminal Tribunals with two branches, one for the International Criminal Tribunal for Rwanda and one for the International Tribunal for the Former Yugoslavia, to commence functioning on 1 July 2012 and 1 July 2013, respectively. The Tribunals' archives were to be co-located with the respective branches of the Mechanism. The Council requested the Tribunals to take all possible measures to expeditiously

complete all their remaining work no later than 31 December 2014, to prepare their closure and to ensure a smooth transition to the Mechanism.

12. The Council decided that the Mechanism would continue the jurisdiction, rights and obligations and essential functions of the Tribunals, as well as all the contracts and international agreements concluded by the United Nations in relation to them. The Mechanism would operate for an initial period of four years, would be reviewed by the Council before the end of that initial period and every two years thereafter, and would continue to operate for subsequent periods of two years following each review, unless the Council decided otherwise.

13. In 2012, the Working Group considered the appointments of the senior officials of the Mechanism, namely the President and the Prosecutor. The Rules of Procedure and Evidence were adopted by the judges in advance of the commencement of operations of the Arusha branch of the Mechanism on 1 July 2012. In addition, the Secretary-General's bulletin entitled "International Criminal Tribunals: information sensitivity, classification, handling and access" (ST/SGB/2012/3) was issued on 20 July 2012.

14. The Residual Mechanism's mandate encompasses both judicial work and certain other essential residual functions, such as monitoring cases referred to national jurisdictions; providing protective services to witnesses and victims; enforcing the sentences of those convicted by either Tribunal; responding to requests for assistance from national jurisdictions; and managing the archives of both Tribunals.

15. On 1 July 2012 the Arusha branch of the Residual Mechanism commenced functioning. On 26 November 2013, the United Nations and the Government of the United Republic of Tanzania signed the headquarters agreement for the Arusha branch of the Mechanism, placing the operation of that branch on a comprehensive legal foundation.

16. On 14 March 2013, the Working Group was briefed by John Hocking, Registrar of the International Tribunal for the Former Yugoslavia and the International Residual Mechanism for Criminal Tribunals, addressing the transition to the branches of the Residual Mechanism in Arusha and The Hague on such activities as witness protection; enforcement of sentences; assistance to national jurisdictions; and the management of archives. The Working Group also received a presentation on the construction of the new premises of the Arusha branch.

17. At the same meeting, Bongani Majola, Registrar of the International Criminal Tribunal for Rwanda, briefed the Working Group on human resources matters, especially the current status of the downsizing in terms of the reduction and retention of staff in Arusha and The Hague. He later addressed the issue of the relocation of acquitted persons, as well as those who had completed their sentences, who were currently located in Arusha.

18. On 25 May 2013, the Security Council issued a statement to the press in which it welcomed the forthcoming commencement of the functioning of the Hague branch of the Residual Mechanism on 1 July 2013. It also recalled its resolution 827 (1993) of 25 May 1993, by which it unanimously established the International Tribunal for the Former Yugoslavia, and noted that the year 2013 marked its twentieth anniversary. On 1 July 2013, the Hague branch of the Residual Mechanism commenced operations.

V. Mandates of the judges of the Tribunals

19. On 5 March 2013, the members of the Security Council received a letter from the President of the International Tribunal for the Former Yugoslavia, Judge Theodor Meron, in which the latter sought the support of the Council in facilitating the completion of the Tribunal's work through the appointment of an additional judge to be deployed to the Appeals Chamber.

20. On 21 May 2013, the Working Group met to consider the proposal for an additional judge of the International Tribunal for the Former Yugoslavia, taking into account extensive exchanges of information produced in response to questions and comments from Security Council members. A preliminary exchange of views was also held on the consolidated comprehensive plan of 15 April 2013 on the completion strategy, closure and transition to the Mechanism.

21. On 12 June 2013, the Chair of the Working Group informed the President of the Security Council that, after extensive consultations, the members of the Working Group had agreed to recommend to the Council that one permanent judge of the Tribunal be elected under article 13 bis, paragraph 1, of the statute of the International Tribunal for the Former Yugoslavia, to be immediately assigned and redeployed to the Appeals Chamber. This decision was communicated to the Secretary-General through a letter dated 12 June 2013 (S/2013/349), in which the Council requested him to invite States to submit nominations within a period of 30 days. From the nominations received, the Council would then establish a list of three candidates, or, should there be only two nominations, a list of two candidates, taking into account the adequate representation of the principal legal systems of the world and the nationalities of the current permanent judges of the two Tribunals.

22. The Secretary-General, through a letter dated 31 July 2013 addressed to the President of the Security Council (S/2013/455), forwarded six nominations received from Member States within the 30-day period specified in the letter dated 12 June 2013. On 29 July 2013 and on 1 and 5 August 2013, the Working Group met to follow up on the Council's letter of 12 June 2013 (S/2013/349). On 8 October 2013, the Council agreed to submit a list of six candidates for the election of one permanent judge of the International Tribunal for the Former Yugoslavia. On 14 and 15 November 2013, the candidates of Austria and Jordan, and of the Islamic Republic of Iran, respectively, withdrew their nominations. The election among the candidates nominated by Estonia, Togo and Saint Vincent and the Grenadines was held on 18 November 2013, in which Judge Koffi Kumelio A. Afande (Togo) was elected.

23. The Security Council also examined a letter from the President of the Tribunal (see S/2013/471) concerning the resignation of Judge Andrésia Vaz from her position as appeals judge in May. In response, the Council supported, through a letter from the President of the Council dated 9 August 2013 (S/2013/474), the intention of the Secretary-General to appoint Mandiaye Niang of Senegal to serve the remainder of Judge Vaz's term as a permanent judge of the Tribunal in accordance with article 12 bis, paragraph 2, of the statute of the Tribunal. The Secretary-General confirmed this decision through his letter dated 11 September 2013 addressed to the President of the Council (S/2013/550).

24. The Working Group considered requests by the Presidents of the Tribunals, including the extension of the judges' terms of office. Following negotiations and

agreement reached among its members, the Working Group made recommendations to the Security Council with regard to the adoption of resolution 2130 (2013).

25. By its resolution 2130 (2013) of 18 December 2013, the Security Council reaffirmed its determination to combat impunity for those responsible for serious international crimes and the necessity of all persons indicted by the International Tribunal for the Former Yugoslavia being brought to justice. It also expressed concern that, in order to complete the work of the Tribunal, trials and appeals would go beyond 2014.

26. Furthermore, the Security Council authorized the extension of the term of office of the following permanent and ad litem judges of the International Tribunal for the Former Yugoslavia until 31 December 2014 or until the completion of the cases to which they are assigned, if sooner: Koffi Kumelio A. Afande (Togo); Carmel Agius (Malta); Jean-Claude Antonetti (France); Guy Delvoie (Belgium); Christoph Flügge (Germany); Burton Hall (Bahamas); O-Gon Kwon (Republic of Korea); Liu Daqun (China); Theodor Meron (United States of America); Bakone Justice Moloto (South Africa); Howard Morrison (United Kingdom of Great Britain and Northern Ireland); Alphons Orie (Netherlands); Fausto Pocar (Italy); Patrick Robinson (Jamaica); Melville Baird (Trinidad and Tobago); Flavia Lattanzi (Italy); and Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo).

27. It should be recalled that, by its resolution 2054 (2012) of 29 June 2012, the Security Council extended the term of office of Judge Vagn Joensen (Denmark), President of the International Criminal Tribunal for Rwanda, until 31 December 2014 so that he may continue to perform the functions required of him as trial judge and President to complete the work of the Tribunal. In that resolution, the Council also decided to review this decision in June 2013. The review was carried out at the meeting of the Working Group on 10 June 2013, during which no objections were presented and his term was confirmed until the date in question.

VI. Other matters

28. Increased efforts are still required towards the relocation of acquitted persons and convicted persons who have completed their sentences but who are currently located in Arusha. In its resolutions 2054 (2012) and 2080 (2012), the Security Council called upon States in a position to do so to assist the International Criminal Tribunal for Rwanda to relocate acquitted persons, as well as those who had completed their sentences. Leaving those individuals behind in the United Republic of Tanzania after the closure of the Tribunal is not a viable option, not least since the host country agreement between the United Nations and the United Republic of Tanzania does not provide any means by which the detainees of the Tribunal currently located in Arusha may be allowed permanent settlement in that country.

29. This matter was further discussed at the meeting held on 14 March 2013 with the Registrar of the International Criminal Tribunal for Rwanda, during which he informed the Working Group of the current status of those individuals and of the preparation of a strategic plan under way. On 30 May 2013, the Working Group received the strategic plan for the relocation of acquitted and released persons in the United Republic of Tanzania prepared by the International Criminal Tribunal for Rwanda. The strategic plan provides for an overall framework under which

sustained efforts will be deployed by the Tribunal, as well as strategic options to be implemented on an ongoing basis.

30. On 20 November 2013, the Working Group met again with the Registrar of the International Criminal Tribunal for Rwanda, during which he updated representatives on the position and emphasized that it was of the utmost importance that States cooperate with the Tribunal in this matter so that it could be resolved before the Tribunal's closure. He also highlighted that this issue should not have a negative impact on the completion work of the Tribunal. A fruitful exchange of views among members of the Working Group was held.

31. There was a discussion among representatives as to whether this was a legal or a humanitarian issue. Consensus was reached at the end that this was a humanitarian issue and had to be treated as such. There was also consensus that this remained a pressing and important issue that had to be resolved and that the Council had to remain seized of the matter. Finally, it was agreed that the Registrar should continue to pursue all possible options, including the possibility of reaching an agreement on voluntary return to Rwanda.

32. On 14 May 2013, Serbia sent a letter to the Security Council in which it recalled its request to sign an agreement with the International Tribunal for the Former Yugoslavia for the enforcement of sentences. In its view, no progress had been made because the question continued to be determined by the Secretary-General's recommendation to the Council in May 1993 that the enforcement of the sentences should take place outside the territory of the former Yugoslavia.

VII. Conclusion

33. In view of Guatemala's unwavering commitment to the rule of law, we were very pleased to chair the Working Group during our two-year membership in the Security Council and to facilitate agreement on the adoption of a variety of resolutions and the issuance of statements to the press, letters and reports.

34. The Working Group will have to continue to perform important tasks, such as supporting the efforts of the two Tribunals to implement their completion strategies and continuing to ensure a smooth transition from the Tribunals to the Residual Mechanism. The resolution of such challenges as staff retention is essential for the timely completion of the work of the Tribunals. Cooperation with both Tribunals should be intensified, in particular towards the arrest and surrender of the remaining fugitives.

35. In order to keep the momentum that has been generated, it would seem advisable that the Working Group continue holding regular meetings and briefings, maintaining a regular dialogue with the Tribunals and close contacts with the affected countries and host countries of the Tribunals and the Residual Mechanism, as well as continuing its close cooperation with the Office of Legal Affairs. The Chair and the Working Group have greatly benefited from the support and input provided by the Office of Legal Affairs and will continue to depend on its expertise in the future.

36. In conclusion, we would like to thank all members of the Working Group for their important contributions. Our appreciation also goes to the Office of Legal Affairs and the Security Council Affairs Division for their invaluable support during

our chairmanship in 2012 and 2013. Finally, we would like to acknowledge the Presidents and the Prosecutors for their ongoing commitment to working closely together in furtherance of the mandates and timelines established by the Council for all three bodies, at a historic period of their coexistence.